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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

ORACLE USA, INC.; a Colorado corporation;  
 ORACLE AMERICA, INC.; a Delaware  
 corporation; and ORACLE INTERNATIONAL  
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
 and SETH RAVIN, an individual,

Defendants.

**Case No. 2:10-cv-0106-LRH-VCF**

**ORACLE'S MOTION TO SEAL  
 ORACLE'S RESPONSE TO  
 RIMINI'S RESPONSE TO ORDER  
 TO SHOW CAUSE AND  
 SUPPORTING DECLARATIONS  
 AND EXHIBITS**

**NOTICE OF MOTION AND MOTION**

Pursuant to the Stipulated Protective Order governing confidentiality of documents entered by the Court on May 21, 2010, ECF No. 55 (“Protective Order”), Local Rules 10-5(b), Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation (collectively “Oracle”) respectfully request that the Court order the Clerk of the Court to file under seal the following documents:

- Portions of Oracle’s Response to Rimini’s Response to Order to Show Cause (“Oracle’s Response”);
- Portions of the Declaration of Jacob Minne Supporting Oracle’s Response (“Minne Declaration”);
- Portions of the Declaration of Barbara Frederiksen-Cross Supporting Oracle’s Response (“Frederiksen-Cross Declaration”); and
- Exhibits 1–4, 8–24, and 26–32.

Public, redacted versions of Oracle’s Response and these Declarations and Exhibits were filed on June 9, 2021. ECF No. 1472. Unredacted versions of these documents will be subsequently filed under seal with the Court and linked to the filing of this motion.

Oracle’s Motion to Seal is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, documents incorporated by reference, and the entire record in this action.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. LEGAL STANDARD

Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c). The Ninth Circuit has held that “compelling reasons must be shown to seal judicial records attached to a dispositive motion” based on the presentation of “articulable facts.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179, 1181 (9th Cir. 2006). Courts have discretion to determine what constitutes a “compelling reason,” and have found “sources of business information that might harm a litigant’s competitive standing” are sufficient to meet the “compelling reasons” standard. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (internal citations omitted).

Documents may be sealed for “good cause.” *Kamakana*, 447 F.3d at 1179–80; *Selling Source, LLC v. Red River Ventures, LLC*, 2:09-CV-01491-JCM, 2011 WL 1630338, at \*1 (D. Nev. Apr. 29, 2011) (citing *Phillips v. General Motors*, 307 F.3d 1206, 1210, 1213 (9th Cir. 2002)). With non-dispositive motions, a party may overcome the presumption against sealing a document by showing that the material to be filed under seal is being done so pursuant to a valid protective order. ECF No. 1349 at 3 (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002))).

Under the Protective Order, a “Designating Party may designate any Discovery Material as ‘Confidential Information’ or ‘Highly Confidential Information – Attorneys’ Eyes Only’ . . . if such counsel in good faith believes that such Discovery Material contains such information and is subject to protection under Federal Rule of Civil Procedure 26(c).” Protective Order ¶ 2. Such a designation “constitute[s] a representation that an attorney for the Designating Party reasonably believes there is a valid basis for such designation.” *Id.*

## II. ARGUMENT

Oracle requests that Court seal Exhibits 2–3 and 12–14 as described below and further requests that the Court seal those portions of Oracle’s Response as described below. Oracle also requests that the Court seal portions of the Minne Declaration, Frederiksen-Cross Declaration, along with Exhibits 1–4, 8–24, and 26–32 and the corresponding portions of Oracle’s Response referencing these materials because they each reference documents or testimony that Rimini has designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order.

### A. Exhibits and Briefing Material Containing Oracle’s Confidential Information

Exhibit 2 contains excerpts from the May 20, 2020 Corrected Post-Injunction Expert Report of Barbara Ann Frederiksen-Cross. Portions of Exhibit 2 (including footnote 358, page 145, and paragraph 372) contain non-public, technologically, and commercially sensitive information relating to Oracle’s PeopleSoft and JD Edwards software. The public disclosure of this information would create a significant risk of competitive injury and particularized harm, and would prejudice Oracle. ECF No. 1367-2 (Declaration of James C. Maroulis Regarding Sealing) at ¶ 3. Oracle therefore requests that the Court seal these identified portions in Exhibit 2.

Exhibit 3 contains excerpts from the September 14, 2018 Surrebuttal Report of Barbara Ann Frederiksen-Cross submitted in the *Rimini II* litigation. Portions of Exhibit 3 (including footnotes 2–6, and 27) contain non-public, technologically, and commercially sensitive information relating to Oracle’s PeopleSoft, JD Edwards, and E-Business Suite software. The public disclosure of this information would create a significant risk of competitive injury and particularized harm, and would prejudice Oracle. ECF No. 1367-2 at ¶ 3. Oracle therefore requests that the Court seal these identified portions in Exhibit 3.

Exhibit 12 contains excerpts of a document produced by Rimini bearing the Bates number RSI007291141. Portions of Exhibit 12 (including RSI007291142) contain non-public, technologically, and commercially sensitive information relating to Oracle’s PeopleSoft software. The public disclosure of this information would create a significant risk of competitive injury and

1 particularized harm, and would prejudice Oracle. ECF No. 1367-2 at ¶ 3. Oracle therefore  
2 requests that the Court seal these identified portions in Exhibit 12.

3 Exhibit 13 contains excerpts of a document produced by Rimini bearing the Bates number  
4 RSI007291146. Exhibit 13 contains non-public, technologically, and commercially sensitive  
5 information relating to Oracle's PeopleSoft software. The public disclosure of this information  
6 would create a significant risk of competitive injury and particularized harm, and would prejudice  
7 Oracle by revealing confidential technical information about proprietary Oracle source code files.  
8 ECF No. 1367-2 at ¶ 3. Oracle therefore requests that the Court seal the entirety of Exhibit 13.

9 Exhibit 14 contains excerpts of a document produced by Rimini bearing the Bates number  
10 RSI007291065. Portions of Exhibit 14 (including RSI007291066) contain non-public,  
11 technologically, and commercially sensitive information relating to Oracle's PeopleSoft software.  
12 The public disclosure of this information would create a significant risk of competitive injury and  
13 particularized harm, and would prejudice Oracle. ECF No. 1367-2 at ¶ 3. Oracle therefore  
14 requests that the Court seal these identified portions in Exhibit 14.

15 With respect to Oracle's Response, portions of this Response (including portions of the  
16 table on pages 11–12) contain non-public, technologically and commercially sensitive  
17 information relating to Oracle's PeopleSoft software. The public disclosure of this information  
18 would create a significant risk of competitive injury and particularized harm, and would prejudice  
19 Oracle. ECF No. 1367-2 at ¶ 3. Oracle's competitors and potential competitors could use such  
20 information in competition with Oracle. *Id.* Oracle therefore requests that the Court seal these  
21 identified portions in Oracle's OSC Motion.

22 Oracle would be harmed by the disclosure of the information contained in Exhibits 2–3,  
23 12–14, and those portions of Oracle's Response already discussed. As a result, these materials  
24 should be sealed. *Ctr. for Auto Safety*, 809 F.3d at 1097 (“sources of business information that  
25 might harm a litigant's competitive standing,” constitute “compelling reasons” to seal); *Icon-IP*  
26 *Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12- CV-03844-JST, 2015 WL 984121, at  
27 \*2 (N.D. Cal. Mar. 4, 2015) (“pricing, profit, and customer usage information, when kept

1 confidential by a company, is appropriately sealable under the ‘compelling reasons’ standard  
2 where that information could be used to the company’s competitive disadvantage”); *U.S. Ethernet*  
3 *Innovations, LLC v. Acer, Inc.*, C 10-3724 CW, 2013 WL 4426507, at \*4-5 (N.D. Cal. Aug. 14,  
4 2013) (granting third party plaintiffs motion to seal after finding that third party plaintiffs  
5 licensing and settlement agreement contained sensitive information). Because of these  
6 compelling reasons to seal documents containing Oracle’s confidential technical information, the  
7 Court should grant Oracle’s motion to seal at least as to the material identified in Exhibits 2–3,  
8 12–14, and those portions of Oracle’s Response.

9 **B. Rimini Designated Material to Be Sealed**

10 Oracle also requests that the Court seal portions of the Minne Declaration, Frederiksen-  
11 Cross Declaration, along with Exhibits 1–4, 8–24, and 26–32 and the corresponding portions of  
12 the OSC Motion referencing these materials because they each reference documents or testimony  
13 that Rimini has designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”  
14 under the Protective Order, or reflect information drawn from data sources that Rimini has  
15 designated as “Highly Confidential – Attorneys’ Eyes Only.” Oracle submits these documents  
16 under seal pursuant to the Protective Order based on Rimini’s representation that it reasonably  
17 believes there is a valid basis under the Protective Order for its confidentiality designations (and  
18 to give Rimini sufficient time to preserve confidentiality as to materials produced in this  
19 litigation). Because these materials were designated by Rimini, and except as separately  
20 enumerated above, Oracle is not in a position to provide further justification for why filing the  
21 documents publicly would cause Rimini harm sufficient to justify sealing.

22 This Court has previously granted motions to file under seal portions of documents  
23 containing these and other similar types of confidential information described above. *See, e.g.*,  
24 ECF Nos. 226, 325, 518, 904, 990, 1107, 1228, 1261, 1349, 1459; *see also Rimini II*, Case No.  
25 2:14-cv-1699, ECF No. 627. Sealing the confidential materials referenced herein would not  
26 frustrate the public’s visibility into the judicial process because Oracle’s request to seal is  
27 narrowly tailored to only those documents that contain particularly sensitive information. Oracle

1 has submitted all other portions of its Motion and supporting documents to the Court's public  
2 files, which allows public access to all materials except for the items discussed above.

3 **III. CONCLUSION**

4 For the foregoing reasons, Oracle respectfully requests that the Court grant leave to file  
5 under seal the materials discussed above.

6 MORGAN, LEWIS & BOCKIUS LLP

7 DATED: June 9, 2021

8 By: /s/ Benjamin P. Smith  
9 Benjamin P. Smith

10 Attorneys for Plaintiffs Oracle USA, Inc., Oracle  
11 America, Inc. and Oracle International  
12 Corporation  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of June, 2021, I electronically transmitted the foregoing ORACLE'S MOTION TO SEAL ORACLE'S RESPONSE TO RIMINI'S RESPONSE TO ORDER TO SHOW CAUSE AND SUPPORTING DECLARATIONS AND EXHIBITS to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

MORGAN, LEWIS & BOCKIUS LLP

DATED: June 9, 2021

By: /s/ Benjamin P. Smith  
Benjamin P. Smith

Attorneys for Plaintiffs Oracle USA, Inc., Oracle  
America, Inc. and Oracle International  
Corporation